

IN THE MATTER OF	:	BEFORE THE
JIM CABRAL	:	HOWARD COUNTY
Petitioner	:	BOARD OF APPEALS
	:	HEARING EXAMINER
	:	BA Case No. 08-034V

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DECISION AND ORDER

On September 2, 2008, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of John Cabral for a variance to reduce the 10-foot side setback to 3 feet for a proposed one-car garage to be attached to the side of a single-family detached dwelling in an R-20 (Residential: Single Family) Zoning District, filed pursuant to Section 130.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioners provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

John Cabral, Duane Brickhouse, Christina Amaro, and Paul Farragut testified in favor of the petition. No one testified in opposition to the petition.

FINDINGS OF FACT

Based upon the evidence presented at the hearing, I find as follows:

1. The 10,628 square foot, parallelogram shaped property is located on the east side of Ligon Road about 200 feet south of Old Frederick Road and is also known as 3605 Ligon Road (the "Property"). The Property lies in the 2nd Election District and is identified on Tax Map 24, Block 10, as Parcel 819, Lot 25 and part of 25. The front lot line appears to be about 58± feet wide,

the rear, about 97± feet wide, and the side lot lines, about 126± feet deep. The Property is improved by a two-story, single-family detached dwelling situated about mid-center on the lot. Access is provided via a driveway lying near the north lot line.

2. Vicinal Properties. Adjacent properties are also zoned R-20 and are improved with single-family dwellings, many with small garages. To the north, the two corner lots at the intersection with Frederick are significantly larger than the Property.

3. The Petitioner is requesting a variance from Section 108.D.4.a(1)(b)(ii) for 14 foot by 24 foot, one-car garage to be attached to the north side of the dwelling. At built, the front section would be 6 feet from the side lot line, and the rear section would be 3 feet from the lot line.

4. John Cabral testified that the Property is a parallelogram, which causes the house to be 20 feet from its front and only 15 feet at its rear.

5. Christina Amaro testified that the garage would be more than 100 feet from the joining property.

6. Paul Farragut, who lives across the street, stated the lot is the smallest on the street.

CONCLUSIONS OF LAW

The standards for variances are contained in Section 130.B.2.a of the Regulations. That section provides a variance may be granted only if all of the following determinations are made:

(1) That there are unique physical conditions, including irregularity, narrowness or shallowness of the lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique physical condition, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.

(2) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the

appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

(3) That such practical difficulties or hardships have not been created by the owner provided, however, that where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

(4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief.

Based upon the foregoing Findings of Fact, and for the reasons stated below, I find the requested variance complies with Section 130.B.2.a(1) through (4), and therefore may be granted.

1. The first criterion for a variance is that there must be some unique physical condition of the property, e.g., irregularity of shape, narrowness, shallowness, or peculiar topography that results in a practical difficulty in complying with the particular bulk zoning regulation. Section 130.B.2(a)(1). This test involves a two-step process. First, there must be a finding that the property is unusual or different from the nature of the surrounding properties. Secondly, this unique condition must disproportionately impact the property such that a practical difficulty arises in complying with the bulk regulations. See *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995). A "practical difficulty" is shown when the strict letter of the zoning regulation would "unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome." *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28, 322 A.2d 220 (1974).

In this case, there is no dispute that the lot is irregularly shaped and smaller than most, if not all, lots on the street. Consequently, I conclude the size and shape of the Property are

unique physical conditions causing the Petitioner practical difficulty in complying with the setback requirement, in accordance with Section 130.B.2.a(1).

2. The proposed garage will be used for a permitted purpose. As the evidence shows, and as I observed, many neighboring dwellings have small garages. The variance, if granted, will therefore not alter the essential character of the neighborhood in which the Property is located nor substantially impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare, in accordance with Section 130.B.2.a(2).

3. The practical difficulty in complying strictly with the setback regulation arises from the Property's shape and size and was not created by the property owners, in accordance with Section 130.B.2.a(3).

4. The proposed one-car garage is a reasonable size. Within the intent and purpose of the regulations, then, the variance is the minimum necessary to afford relief, in accordance with Section 130.B.2.a(4).

ORDER

Based upon the foregoing, it is this 8th Day of September 2008, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Jim Cabral for a variance to reduce the 10 foot side setback to 3 feet for a proposed one-car garage attached to a single-family detached dwelling in an R-20 (Residential: Single Family) Zoning District is **GRANTED**.

Provided, however, that:

1. The variance shall apply only to the use and structure as described in the petition submitted and not to any other activities, uses, structures, or additions on the Property.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**

Michele L. LeFaivre

Date Mailed: _____

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.